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SEALING CRIMINAL JUSTICE RECORDS

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Introduction

In 2007, the General Assembly passed House Bill 07-1107, which amended Colorado law concerning the sealing of criminal justice records. While most criminal justice records, including arrest records and court dispositions, are open to the public, certain criminal justice records can be sealed if they meet criteria as provided by Colorado law. The passage of House Bill 07-1107 allows certain criminal convictions to be sealed in the same manner as other criminal justice records. This *Issue Brief* discusses the law pertaining to sealing criminal records in Colorado and the changes to the law as provided by House Bill 07-1107.

Criminal Records

Colorado law requires that all official¹ actions taken by a criminal justice agency be recorded and open to public inspection. The criminal justice agency that takes an action is responsible for maintaining the associated records. Colorado law also requires each criminal justice agency in the state to furnish to the Colorado Bureau of Investigation (CBI) all arrest, identification, and final charge dispositional

information on persons arrested in the state for federal, state, or out-of-state criminal offenses, and on persons admitted to serve a sentence of incarceration. For a minimal fee, any person or employer may obtain criminal history information from the CBI's records check system and court case information from the Judicial Department's Integrated Colorado On-Line Network (ICON).

Sealing Criminal Records

A criminal record can be sealed if it meets certain criteria specified in Colorado law. Everything except basic identifying information² may be sealed if the individual in question was acquitted, the charges were dismissed, or a decision was made not to file charges. Additionally, records pertaining to an offense that was not charged or dismissed due to a plea agreement in a separate case may be sealed after a specified number of years (House Bill 07-1107 changed the number of years). The person of interest must file a petition to the court to request to have a criminal record sealed. If a hearing is granted, the person of interest must notify the prosecuting attorney and arresting agency of the pending petition hearing. The court can deny the request to seal a criminal record if the court determines it is not in the best interest of public safety to seal the record in question.

¹ "Official action" means an arrest; indictment; charge by a district attorney; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in a correctional or rehabilitative program; and any decision to formally discipline, reclassify, or relocate any person under a criminal sentence.

² "Basic identification information" means the name, place and date of birth, last-known address, social security number, occupation and place of employment, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases.

Once a court seals a criminal record, it is treated as nonexistent for purposes of public information and inspection. Sealed criminal records are not available for inspection by employers and other entities conducting background checks, and only law enforcement agencies are allowed access to a sealed record.

After a criminal record has been sealed, the person of interest does not need to disclose any information concerning the sealed record to any educational institution, state or local government agencies, officials, landlords, or in any application or interview or for any other reason.

House Bill 07-1107. House Bill 07-1107 was enacted by the General Assembly to allow individuals to petition the court to seal criminal justice records after they demonstrated the ability to remain out of the criminal justice system after a set period of time. House Bill 07-1107 also extends the criminal record sealing procedure to criminal convictions. However, not all records of convictions can be sealed, including convictions for:

- a class 1 or class 2 misdemeanor traffic offense;
- a class A or B traffic infraction;
- a driving under the influence violation;
- a sexual offense;
- a domestic violence crime;
- child abuse; or
- an offense that is subject to sentencing under extraordinary aggravating circumstances, sentence-enhancing circumstances, an extraordinary risk crime, or a crime involving a pregnant victim or special offender.

This bill allows a defendant to petition the district court to seal criminal conviction records information 10 years following the completion of a sentence or release from supervision, whichever is later. The defendant cannot have a record sealed if he or she still owes court-ordered restitution, fines, or fees. As with criminal records, the court has the discretion to reject

the request to seal a criminal conviction record if it is not in the public's best interest. However, after a criminal conviction record has been sealed, any individual can petition the court to unseal the record of a subject in question by showing that circumstances have come into existence since the original sealing that outweigh the subject's interest in privacy.

It is interesting to note that between 1977 and 1981, Colorado law allowed individuals to petition the court to seal a criminal justice (acquittals, dismissals, no charges filed) or criminal conviction record after a specified number of years. In 1981, Colorado law was changed so that individuals could no longer petition the court to seal a criminal conviction record. Instead, individuals were allowed to petition the court to limit the release of a criminal conviction record to only him or her self, criminal justice agencies, and the attorneys involved in the case. However, in 1988 criminal convictions were removed from the sealing of records procedure and individuals could petition the court to seal only those criminal justice records where an individual was acquitted, charges were dismissed, or charges were not filed.

House Bill 07-1107 also reduces the number of years, from 15 years to 10 years, that an individual must wait before filing a petition to seal a criminal record pertaining to a criminal offense that was not charged or dismissed due to a plea agreement in a separate case, or that resulted in an acquittal. The person of interest must still go through the regular process of petitioning the court to seal his or her criminal record, and if granted, must notify all custodians of the records, including the CBI, of the order.

Finally, prior to House Bill 07-1107, only the court was required to advise an individual of his or her right to petition the court to seal a criminal record. However, this bill requires the probation department and the defendant's parole officer, in addition to the court, to advise a defendant of his or her right to seal a criminal record and/or a criminal conviction record under the appropriate circumstances.